IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8353 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI BATUKBHAI SUKHABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 21.6.2000, Annexure-A, in respect of petitioner passed by respondent no. 2 in exercise of his

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is a 'bootlegger' within the meaning of Sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on 4 Prohibition Cases lodged in Talaja Police Station which are referred to in the grounds of detention Annexure-B. The detaining authority has also placed reliance on the statements of four anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, such statements were verified by the detaining authority on 20.6.2000 and on the very next day, he passed an order of detention on 21.6.2000, which is challenged in this petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to the main petition, controverting the grounds of attack mentioned in the memo of petition.

4. Ms. Subhadraben Patel learned advocate for the petitioner has argued that in this case the detaining authority has adopted a short-cut method of putting a rubber seal impression of endorsement of "verified the contents" below the statement. This verification clearly shows that the privilege claimed by the detaining authority is not genuine. She has cited an authority of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana and Ors., reported in 1996(1) GLH 300. Looking to the facts of that cited case, in that case the detaining authority had only put an endorsement in form of one word 'verified' below statements of such witnesses. This Court has held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and, therefore, the order of continued detention was held to be illegal. Here in this case also, the detaining authority has put an endorsement of two words "verified the contents" and, therefore, the claim of privilege made by the detaining authority under sec. 9(2) of the Act is not genuine and to the aforesaid extent. The detenu was denied for making effective representation by not supplying the other details of the statements of witnesses.

5. In view of what is stated hereinabove, this

petition is allowed. The impugned order of detention dated 21.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H.MEHTA, J.)
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